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ELECTION COMMISSION, INDIA

NOTIFICATIONS

Kotah, the 25th September, 1952.

No. KET/30.—In pursuance of the provisions of sub-section (1) of section 90 of the Representation of the People Act, 1951 (XLIII of 1951), the following Election Petition presented under section 81 thereof is published for information.

P. D. PANDE, *Chairman,*
Election Tribunal, Kotah.

THE ELECTION COMMISSION, NEW DELHI.

ELECTION PETITION No. 145 of 1952.

Election petition under sections 61 and 83 of the Representation of the People Act (Act No. 43 of 1951).

Chiranjilal, s/o Kesarmal, resident of Ward No. 3, House No. 176, Sambhar Lake—Applicant.

Versus.

1. Panna Lal Kaushik, Shahi Bagh, House No. 307, Ahmedabad.
2. Laxmi Narain Yadav, Jaipur City Ward Garbi, House No. 2887, Parkote ke Bahar.
3. Shri Shri Gopal, Manohar Bhawan, Udaipur.

The applicant begs to state:—

1. That Mrs. Vranda's name is registered as a voter at No. 7029 on page No. 279 and amended on Page 207 serial No. 8 in the Electoral roll of Jaipur city 'C' Constituency prepared for the election held from the 4th January, 1952.

2. That Mrs. Vranda being qualified in every respect as a candidate for the election of the House of People held in January 1952 filed her nomination paper on the 26th November 1951, with the Returning Officer within the period notified in that behalf.

3. That the said Returning Officer on 28th November 1951 held the scrutiny and on the objection of respondents rejected the nomination paper of Mrs. Vranda on the ground that column No. 7 does not disclose the name of the constituency in which the name of Mrs. Vranda is included.

4. That the orders of the Returning Officer rejecting the Nomination paper of Mrs. Vranda is without jurisdiction and illegal on the following among other grounds:—

- (a) That column No. 7 does disclose the name of the constituency in the electoral roll of which the name of Mrs. Vranda is included.
- (b) That at the most it can be said that name of the Parliamentary constituency should have been entered against column No. 7, but the very purpose of the said rule is served by the present entry.
- (c) That on such minor mistake the nomination could not have been refused under section 36 of the said Act.
- (d) That another nomination paper was rejected on the ground that the proposer and seconder are the same as in the previous papers of Mrs. Vranda which, is totally illegal.
- (e) That the rejection of Mrs. Vranda's nomination on the above mentioned grounds is wholly without jurisdiction and illegal.
- (f) That the result of the election has been materially affected by the improper rejection of Mrs. Vranda's nomination paper.

5. That the respondents have been declared duly nominated at the election *vide* Government of India Gazette Vol. No. 6, Part II Section 3, dated the 3rd January, 1952, Extra Ordinary.

6. That the name of the respondent No. 1 has been published as the returned candidate in the Gazette of India No. 53, dated the 18th February 1952, Part I, Section 3, Ex. Ord.

7. That Mrs. Vranda sent the return of expenses on 29th March, 1952.

8. That Rs. 1,000, have been deposited as security (*vide* receipt No. 572, dated 14th April, 1952), which is attached herewith.

9. That on 1st August, 1952, Mrs. Vranda filed an application before the Election Commission of India for the withdrawal of her election petition and on 2nd August, 1952, the Chief Election Commissioner granted her leave to withdraw that petition.

10. That on 17th August 1952, I applied to be substituted in place of Mrs. Vranda in her election petition and on 23rd August 1952, the Chief Election Commissioner ordered that my name be substituted.

11. That as required by section 117 of the Representation of People Act, 1951, a sum of Rs. 1,000 has been deposited by way of security in the Government Treasury, Rajasthan, Jaipur in favour of the Secretary to the Election Commission, *vide* chalan No. 3325, dated 16th August 1952.

12. The petitioner therefore prays:—

- (a) That the election of Respondent No. 1 from the Tonk Parliamentary Constituency to the House of People be declared void.
- (b) That costs be awarded.
- (c) That any other appropriate relief to which the petitioner be deemed entitled be granted.

I Chiranjilal S/o Kesarmal by caste Jain, Resident of Sambhar, solemnly affirm today the 24th of September, 1952 that the amendments sought today are true to the best of my knowledge and belief, and so are the contents of paragraphs 1 to 12 of the amended petition.

KOTAH, 24th September, 1952.

(Sd.) CHIRANJILAL.

No. 19/41/52-Elec.III.—WHEREAS the election of Shri Kailashchandragiri of Khategaon as a member of the Legislative Assembly of the State of Madhya Bharat from the Khategaon Constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Balwantrao Anandrao Regde of Ajnas;

AND WHEREAS, the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

Election Petition No. 41/52

ORDER

The Petitioner Balwantrao Anantrao Rege of Ajnas was a candidate for Election to the Legislative Assembly of Madhya Bharat State from the Khategaon constituency. His nomination paper was rejected by the returning officer on the ground that the consent of the Election Agent in form VA did not accompany the nomination paper, and apparently consent of the Election Agent had not been secured in accordance with the provisions of Rule XIA under the R.P.A. 1951.

Five persons have been impleaded as respondents but the contest before us has been mainly by the sitting member Kailashchandra Giri. It is contended on his behalf that the Petitioner ought to have filed a declaration of acceptance by the Election Agent of his appointment and not made it on the nomination paper as has been done in this case. It is further said that the rejection of the petitioner's nomination paper has not materially affected the Election.

Mr. S. D. Sanghi for Kailashchandra Giri contended that it was not enough for a candidate to make the requisite declaration of the appointment of an Election Agent on the nomination paper and the 'declaration' referred to in Section 33 of R.P.A. ought in fact to be the appointment made in form No. V and that it ought to be filed independently of the nomination paper and not merely endorsed thereon. This contention must be repelled. The R.P.A. prescribes a form of nomination paper (*vide* Rule 4 and Schedule II) to the Act and the addition of Rule XIA,

prescribing form No. 5 has made no change in the form prescribed by Rule 4. It must be observed that the consent of the Election Agent was necessary even under Section 40(2) of the R.P.A. which deals with the appointment of an Election Agent. The Act apparently makes a distinction between an 'appointment' and a 'declaration' and accordingly it has been held that no form being prescribed for the declaration appointing an agent, all that is required is that the agent shall be named in the declaration, and the law is fully complied with if only the name of the agent is stated without any further detail. *Basant Singh Vs. Rattan Singh* (1 Doabias I.E.C. 80. *Shashicharan Vs. Ram Prasad Doabias* E.C. 47 *Sarin and Pandit Indian Election Law* page 302).

As observed above Rule 11A only requires that the appointment of an Election Agent should be on a prescribed form but there is no change in the law about declaration of the appointment and no form prescribed for the declaration apart from what appears on the nomination paper. It was held prior to the addition of Rule XIA that a declaration on the back of the nomination paper was sufficient compliance with the law and its not being separately attached makes no difference. *S.W. Kelkar Vs. R. V. Mahajani* Doabias E.C. No. 37 *Chhail Bihari Lal Vs. Motisingh* D.E.C. No. 27

There is no material on which the inference that the Petitioner had not obtained the assent of the agent in proper form could be supported; and on the view of the law as discussed above an enquiry about the form of the agent's appointment was not called for at the stage of the scrutiny. It follows that there has not been any failure to comply with the provisions of Section 33 which would justify the rejection of the nomination paper in this case.

It has been uniformly held that the result of an Election is materially affected by the improper rejection of a nomination paper. In such a case the whole Electorate is deprived of its right to vote for a candidate who was entitled to stand for Election and the Court can presume that the result is materially affected. *Balu Jagannath Pd. Vs. Raja Maheshram Dayal*, D.I.E.C. 217.

We therefore allow the Petition with costs and declare the Election wholly void. Lawyers fees will be taxed as Rs. 100.

(Sd.) AMAR NATH.

(Sd.) R. N. SHINGHAL.

(Sd.) M. B. REGE.

20-9-52.

P. S. SUBRAMANIAN,
Officer on Special Duty.

